



City of Albuquerque

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## **CITY of ALBUQUERQUE SIXTEENTH COUNCIL**

**F/S Amending ROA 1994, a Portion of the Nuisance Abatement Ordinance to Revise the Definition of Public Nuisance; Allowing the Owner of Real Property Whose Activities on the Property are Not a Nuisance to Enter Into a Written Nuisance Abatement Agreement With the City (Loy)**

## **CITY of ALBUQUERQUE SIXTEENTH COUNCIL**

**AMENDING SECTION 11-1-1-3, ROA 1994, A PORTION OF THE NUISANCE ABATEMENT ORDINANCE, TO REVISE THE DEFINITION OF PUBLIC NUISANCE TO INCLUDE ADDITIONAL CRIMINAL OFFENSES AND CALLS FOR SERVICE AND COMPLAINTS; AMENDING SECTION 11-1-1-10 (B), ALLOWING THE OWNER OF REAL PROPERTY WHOSE ACTIVITIES ON THE PROPERTY ARE NOT A NUISANCE TO ENTER INTO A WRITTEN NUISANCE ABATEMENT AGREEMENT WITH THE CITY; AMENDING SECTION 11-1-1-26, REMEDIES FOR PUBLIC NUISANCES.**

**BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:**

**Section 1. In Section 11-1-1-3, ROA 1994, the definition of "PUBLIC NUISANCE" is amended to read as follows:**

**"PUBLIC NUISANCE. (A) Any parcel of real property, commercial or residential, any personal property, or any vehicle on or in which any of the following illegal activities occurs, or which is used to commit, conduct, promote, facilitate, or aid the commission of or flight from any of the following activities. For purposes of**

**this section, the illegal activity shall have the same definition as the contained in the section of the New Mexico Statutes Annotated (NMSA), as amended, or Chapter 12, the Criminal Code of the Revised Ordinances of Albuquerque, New Mexico, 1994, as amended, listed after the illegal activity:**

- (1) Prostitution, 30-9-2 NMSA; patronizing prostitutes, 30-9-3 NMSA; promoting prostitution, 30-9-4 NMSA; accepting earnings of a prostitute, 30-9-4.1 NMSA; or**
- (2) Sexual exploitation of children by prostitution, 30-6A-4 NMSA; or**
- (3) Sexual exploitation of children, 30-6A-3 NMSA; or**
- (4) Trafficking in controlled substances, 30-31-20 NMSA; distributing controlled substances to a minor, 30-31-21 NMSA; distribution of a controlled substance, 30-31-22 NMSA; possession of a controlled substance, 30-31-23 NMSA; distributing a counterfeit controlled substance, 30-31-22B NMSA; distributing manufacture, or possession of an imitation controlled substance, 30-31A-4 NMSA; sale of an imitation controlled substance to a minor, 30-31A-5 NMSA; or**
- (5) Unlawful possession, delivery, manufacture or delivery to a minor of drug paraphernalia, 30-31-25.1 NMSA; or**
- (6) Receiving stolen property, 30-16-11 NMSA; or**
- (7) Commercial gambling, 30-19-3 NMSA; permitting premises to be used for gambling, 30-19-4 NMSA; dealing in gambling devices, 30-19-5 NMSA; or**
- (8) Disorderly conduct, 30-20-1 NMSA and § 12-2-5 ROA 1994; or**
- (9) Unlawful carrying of a deadly weapon, 30-7-2 NMSA and § 12-2-8 ROA 1994; unlawful possession of a handgun, 30-7-2.2 NMSA; negligent use of a weapon, 30-7-4 NMSA and § 12-2-9 ROA 1994; unlawful possession of a switchblade, 30-7-8 NMSA and § 12-2-10(A) ROA 1994; receipt, transportation or possession by a felon of a firearm or destructive device, 30-7-16 NMSA; unlawful possession, transfer or sale of weapons, § 12-2-10 ROA 1994; or**
- (10) Dangerous use of explosive, 30-7-5 NMSA; negligent use of explosives, 30-7-6 NMSA; unlawful sale, possession or transportation of explosives, 30-7-7 NMSA; possession of explosives, 30-7-19 NMSA;**

**possession of explosive device or incendiary device, 30-7-19.1 NMSA; or**

**(11) Any criminal activity by a criminal street gang as defined herein; or**

**(12) Shooting at a dwelling or occupied building or shooting at or from a motor vehicle, 30-3-8 NMSA; or**

**(13) Selling, serving, giving away, disposing of, exchanging, delivering, procuring, possessing or permitting the sale of alcoholic beverages to, for or by any person under lawful age or to an intoxicated person, 60-7A-16 and 60-7B-1 NMSA; using property to provide, offer or permit the consumption of intoxicating liquors by three or more persons who are under the age of twenty-one without their parent's or guardian's knowledge or consent or the order of a practicing physician, or as part of a religious ceremony, or failing to use reasonable control and ordinary care to keep persons under the age of twenty-one from consuming intoxicating liquors on one's property, § 11-11-5 ROA 1994; or**

**(14) The sale of alcoholic beverages at any place other than valid (not suspended or revoked) licensed premises , 60-7A-4.1 NMSA; or the unlawful manufacture of alcoholic beverages, 60-7A-7 NMSA; or**

**(15) The unlawful transportation or storage of any property that is the subject of a felony theft, misdemeanor theft, or theft by receiving under Chapter 30, Article 16 NMSA; or**

**(16) The storage or concealment of weapons or tools used in the commission of a violent crime or tampering with evidence, 30-22-5 NMSA; harboring or aiding a felon, 30-22-4 NMSA; or**

**(17) Fleeing or evading a police officer on foot or by vehicle, 30-22-1 NMSA; or escape from a peace officer, 30-22-10 NMSA; or**

**(18) Dog fighting, 30-18-9 NMSA; or**

**(19) Assault upon a peace officer, 30-22-21 NMSA; aggravated assault upon a peace officer, 30-22-22 NMSA; assault with intent to commit a violent felony upon a peace officer, 30-22-23 NMSA; battery upon a peace officer, 30-22-24 NMSA; aggravated battery upon a peace officer, 30-22-25 NMSA;**

**assisting in assault upon a peace officer, 30-22-26 NMSA; disarming a peace officer, 30-22-27 NMSA; or**

**(20) Incidents of unreasonable noises, § 12-2-4 ROA 1994 and §§9-9-1 et seq. ROA 1994; or**

**(21) Murder, 30-2-1 NMSA; or**

**(22) Manslaughter, 30-2-3 NMSA; or**

**(23) Incidents of Assault, 30-3-1 NMSA; or**

**(24) Aggravated assault, 30-3-2 NMSA; or**

**(25) Assault with intent to commit a violent felony, 30-3-3 NMSA or**

**(26) Battery, 30-3-4 NMSA; or**

**(27) Aggravated battery, 30-3-5 NMSA; or**

**(28) Shooting at a dwelling or occupied building; shooting at or from a motor vehicle, 30-3-8 NMSA; or**

**(29) Assault against a household member, 30-3-12 NMSA; or**

**(30) Aggravated assault against a household member, 30-3-13 NMSA; or**

**(31) Assault against a household member with intent to commit a violent felony, 30-3-14 NMSA; or**

**(32) Battery against a household member, 30-3-15 NMSA; or**

**(33) Aggravated battery against a household member, 30-3-16 NMSA; or**

**(34) Harassment, 30-3A-2 NMSA; or**

**(35) Stalking, 30-3A-3 NMSA; or**

**(36) Aggravated stalking, 30-3A-3.1 NMSA; or**

**(37) Kidnapping, 30-4-1 NMSA; or**

**(38) Criminal use of ransom, 30-4-2 NMSA; or**

**(39) False imprisonment, 30-4-3 NMSA; or**

**(40) Custodial interference, 30-4-4 NMSA; or**

**(41) Abandonment or abuse of a child, 30-6-1 NMSA; or**

**(42) Contributing to the delinquency of a minor, 30-6-3 NMSA; or**

**(43) Obstruction of reporting or investigation of child abuse or neglect, 30-6-4 NMSA; or**

- (44) Unlawful carrying of a firearm in a licensed liquor establishment, 30-7-19.1 NMSA; or**
- (45) Possession of explosives, 30-7-19 NMSA; or**
- (46) Possession of explosive device or incendiary device, 30-7-19.1 NMSA; or**
- (47) Facsimile or hoax bomb or explosive, 30-7-20 NMSA; or**
- (48) False report, 30-7-21 NMSA; or**
- (49) Interference with bomb or fire control, 30-7-22 NMSA; or**
- (50) Incidents of Littering, 30-8-4 NMSA; or**
- (51) Enticement of a child 30-9-1, NMSA; or**
- (52) Accepting earnings of a prostitute, 30-9-4.1 NMSA; or**
- (53) House of prostitution; public nuisance, 30-9-8 NMSA; or**
- (54) Criminal sexual penetration, 30-9-11 NMSA; or**
- (55) Criminal sexual contact, 30-9-12 NMSA; or**
- (56) Criminal sexual contact of a minor, 30-9-13 NMSA; or**
- (57) Aggravated indecent exposure, 30-9-14.3 NMSA; or**
- (58) Criminal trespass, 30-14-1 NMSA; or**
- (59) Breaking and entering, 30-14-8 NMSA; or**
- (60) Criminal damage to property, 30-15-1 NMSA; or**
- (61) Unauthorized graffiti on personal or real property, 30-15-1.1 NMSA; or**
- (62) Larceny, 30-16-1 NMSA; or**
- (63) Robbery, 30-16-2 NMSA; or**
- (64) Burglary, 30-16-3 NMSA; or**
- (65) Aggravated burglary, 30-16-4 NMSA; or**
- (66) Possession of burglary tools, 30-16-5 NMSA; or**
- (67) Receiving stolen property, 30-16-11 NMSA; or**
- (68) Shoplifting, 30-16-19 NMSA; or**
- (69) Cruelty to animals, 30-18-1 NMSA; or**
- (70) Unlawful assembly, 30-20-3 NMSA; or**
- (71) Attempt to commit a felony, 30-28-1 NMSA; or**

- (72) Conspiracy, 30-28-2 NMSA; or**
- (73) Solicitation, 30-28-3 NMSA; or**
- (74) Public Nuisance, 30-8-1 NMSA; or**
- (75) Violations of the New Mexico Liquor Control Act, 60-3A-1, et seq. NMSA, and 60-7A-1, et seq. NMSA; or**
- (76) Violations of the City of Albuquerque Uniform Housing Code §14-3-1-1 to §14-3-5-99 ROA 1994; or**
- (77) Violations of the City of Albuquerque Housing Code defining nuisance §13-3-1-4 ROA 1994; or**
- (78) Violations of City of Albuquerque Housing Code defining substandard building §14-3-4-1 ROA 1994; or**
- (79) Violations of the City of Albuquerque Fire Codes 14-2-1 ROA 1994; or**
- (80) Violations of the City of Albuquerque's Abandoned or Inoperable Vehicle Ordinance, §8-5-2-0 to §8-5-2-99 ROA 1994; or**
- (81) Violations of the City of Albuquerque's Weed and Litter Ordinance §9-8-1 to §9-8-99 ROA 1994; or**
- (82) Driving under the influence of intoxicating liquor or drugs, §66-8-102 NMSA.**

**(B) A public nuisance shall include and is further defined as any parcel of real property, commercial or residential, that is the subject of or that has been involved with calls for service to any law enforcement agency(ies) for violations of the criminal statutes cited in §11-1-1-3 (A) defining public nuisance and shall include a repeated pattern of calls for service and complaints of vagrants, suspicious persons, suspicious cars, general calls for welfare checks, disorderly conduct, domestic violence, domestic altercations, domestic disputes, loud parties, loud music, neighborhood complaints, noise ordinance violations, and public drunkenness and shall be subjected to the imposition of penalties for public nuisance as provided by §11-1-1-11 ROA 1994. "**

**Section 2. Section 11-1-1-10 (B), ROA 1994 is amended to read as follows:**  
**"(B) An owner of property whose own activities on the real property are not a**

nuisance shall not be in violation of this ordinance if the owner has no knowledge of the public nuisance activity and, upon receiving notice of the activity constituting a nuisance, the owner:

- (1) Demonstrates to the city that the rental agreement for the property contains a provision prohibiting criminal activity;
  - (2) Delivers to the tenant(s) a written notice of termination of the rental agreement as provided by the New Mexico Owner-Resident Relations Act;
  - (3) Files an appropriate report with law enforcement authorities or otherwise cooperates with such authorities in enforcing laws with respect to tenants on the property;
  - (4) Initiates necessary and appropriate legal action to remove residents involved in criminal activity where such activity can be proven;
  - (5) Takes all reasonable and available steps to terminate the public nuisance activity; and
  - (6) Enters into a written Nuisance Abatement Agreement with the City of Albuquerque wherein the property owner agrees to take specific steps including but not limited to providing on-site security or otherwise take action that will abate, terminate or eliminate the public nuisance activity on the property in exchange for the City of Albuquerque reserving its rights and agreeing not to initiate any legal action for public nuisance against the property owner during the term of the agreement provided that the property owner complies with the terms and conditions of the written Nuisance Abatement Agreement and the public nuisance is eliminated, abated or terminated.
- (7) Victims of domestic violence shall not be identified or named as a defendant in any civil cause of action to abate a public nuisance involving commercial or residential property."

**Section 3. Section 11-1-1-26 ROA 1994 is amended to read as follows:**

"Where the existence of a public nuisance is established in a civil action under Subpart C of this ordinance, the city shall petition the court to enter permanent prohibitory and mandatory injunction requiring the defendant to

update the public nuisance and take specific steps to prevent the same and other public nuisances from occurring on the real property, in the vehicle, or using the real property, vehicle or other personal property. The permanent prohibitory and mandatory injunction requested by the city may allow the court to consider other remedies as necessary and provided by law to abate the public nuisance. The city shall also petition the court to order, as to any real property, vehicle or other personal property used to commit, conduct, promote, facilitate or aid in the commission of or flight from any public nuisance, the following remedies:

**(1) Closure of real property and destruction of certain structures.**

That the real property be closed for a period of not less than one year and not more than three years from the date of the final judgment, plus any extension of that period caused by failure to comply with the conditions for release of the property set out below, and if the city requests, that certain structures upon the real property be destroyed. The city may request the court to order the defendants to carry out the destruction of the structures. The city shall petition the court to order the defendants to provide for the maintenance, utilities, insurance, and security of the property during the period of closure, and that at the end of the closure period, the real property be released to the owner only upon (a) payment of all expenses incurred by the city for seizure, closure, utilities, security, access, destruction of buildings, maintenance, insurance, and other reasonable expenses; and (b) payment of all civil judgments under Subpart C; and (c) execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the city and all of its employees and agents for liability for the seizure, closure and damages to the property.

In the event that the owners and other persons holding any legal and equitable interest and rights of possession, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain closed. However, if a year expires



without the owner making payment, the property shall then forfeit to the city. The issuance and execution of the closure order shall not be deemed a bailment of property. The owner of the property remains responsible for the maintenance and security of property subject to the closure order and shall be permitted reasonable access to the property for these purposes upon application to the court.

(2) Receivership of real property and destruction of certain structures. That, when the city so requests, in lieu of closure of real property, the real property be placed into a special receivership for a period not less than one year and not more than three years from the date of final judgment, plus any extension of that period caused by a failure to comply with the conditions for release of the property set out below, and, if the city requests, that certain structures be destroyed. The city may request the court to order the defendants to carry out the destruction. The city shall petition the court to order the defendants to provide for and pay the maintenance, utilities, security, operating expenses, taxes, insurance, receivership fees, and other reasonable expenses related to the property to the extent that the rents, profits, and income of the property under receivership is insufficient to defray these expenses, and that at the end of the receivership period, the real property shall be released to the owner only upon (a) payment of all expenses incurred by the city for seizure, closure, utilities, security, access, maintenance, insurance, taxes, receivership and receivership fees, the costs of destroying structures, and other reasonable expenses not covered by the rents, profits, and income under receivership; and (b) payment of all civil judgments under Subpart C; and (c) execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the city and all of its employees and agents, including the receiver, for any liability for the seizure, closure and receivership and damages to the property.

In the event that the owners and other persons holding any legal or

equitable interest or right of possession in the real property, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain under the receivership or be closed as provided in Subsection (1) above. The issuance and execution of the receivership order shall not be deemed a bailment of property. The owners of the property remain responsible for the maintenance and security of the property subject to the receivership order and shall be permitted reasonable access to the property for these purposes upon application to the court. In the event that the income, rents and profits of the receivership, after a complete accounting, exceed the costs and expenses of access, seizure, closure, maintenance, security, taxes, insurance, destruction of structures, the receivership and receivership fees, and all other reasonable expenses related to the property, the city shall petition the court to order the receiver to expend the remainder first on specific improvements at the property that will abate public nuisances or prevent them from recurring, and second, to pay the civil judgments due in the case.

(3) Impoundment of vehicles. That the vehicle be impounded for a period of not less than six months and not more than one year from the date of the final judgment plus any extension of the period caused by a failure to comply with the conditions for release of the vehicle set out below; and that at the end of the closure period, the vehicle shall be released to the owners only upon: (a) payment of all towing fees, storage fees, and civil judgments under Subpart C; and (b) execution by the owners and lienors of a complete and unconditional release of the city and all of its employees and agents for the closure and any and all damages to said vehicle.

In the event that the owners, lienors, or any of them fail, neglect or refuse to pay the fees, expenses, and judgments when due, and execute the release provided above, the vehicle shall be forfeited to the city. The issuance and execution of the closure order shall not be deemed a bailment of property.

(4) Destruction of vehicles. Where the city so requests, in lieu of

impoundment of the vehicle, that the vehicle be destroyed.

(5) Forfeiture of personal property. That the personal property be forfeited to the city."

**Section 4. SEVERABILITY CLAUSE.** If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

**Section 5. COMPILATION.** This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

**Section 6. EFFECTIVE DATE.** This ordinance shall take effect five days after publication by title and general summary.